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THE CORPORATION TRUST COMPANY AND ASSOCIATED COMPANIES

In the incorporation, qualification and statutory representation of corporations, The Corporation Trust Company, C T Corporation System and associated companies deal with and act for lawyers exclusively.

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The Corporation Trust Company has completed forty-six years of service to attorneys and corporations, its charter having been granted on December 4, 1892, when it began business in a modest way in a small office in New Jersey. Since that time The Corporation Trust Company System has grown to its present group of twenty-four offices in the country's more important cities, with representatives in the remaining states and territories and in a number of foreign countries.

In *Greene, Receiver, etc. v. Reconstruction Finance Corporation*, 24 F. Supp. 181, a Massachusetts Federal court has held that, under the Delaware statute authorizing directors to "sell, lease or exchange" all of the corporate property, the directors of a Delaware company were empowered to *mortgage* substantially its entire property under circumstances where the mortgage was ratified by the stockholders. (See page 270.)

Raymond Kenway

President.

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The Corporation Journal is published by The Corporation Trust Company, monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

Contents for December

What Constitutes Doing Business*

Isolated Transactions

While there is a general rule that if a foreign corporation enters a state, in which it is not licensed, merely for the purpose of carrying on an isolated piece of business such as, for example, fulfilling a single contract, the foreign corporation is not to be regarded as "doing business" so as to be obliged to be authorized to do business within the state, this rule has its exceptions.

A recent Pennsylvania case (*Hoffman Construction Co. v. Erwin,* 200 A. 579, see page 275), illustrates an important exception to this general rule. There it was held that the fulfilling of a single contract to do landscaping, grading and road construction on an estate, carried on over a period of four months, constituted "doing business," as it contemplated what was not a single act but a continuing project. Therefore, it may be said that where a single transaction involves the activities of employes of a foreign corporation within a state for a considerable period, or where the activities necessarily imply that there will be further transactions carried on by the foreign corporation, a license to do business has been held to be necessary.[1]

There are fifteen states where contracts which are entered into within the state prior to qualification are, by statute, either void or unenforceable thereafter in the state courts.[2] Therefore, when the carrying on of an isolated transaction is contemplated in any of these states, it is well to consider the possible effect of such a statute upon it before the transaction is consummated.

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[1] *John Deere Plow Co. v. Wyland,* (Kansas) 76 Pac. 863; *General Highways System, Inc. v. Dennis,* (Michigan) 230 N. W. 906; *Palm Vacuum Cleaner Co. v. Bjornstad et al.,* (Minnesota) 161 N. W. 215; *Peterman Construction and Supply Co. v. Blumenfeld,* (Mississippi) 125 So. 548; *State ex rel. Lay v. Arthur Greenfield, Inc.,* (Missouri) 205 S. W. 619; *National Sign Corp. v. Maccar Cleveland Sales Corp.,* (Ohio) 168 N. E. 758; *Mandel Bros., Inc. v. Henry A. O'Neil, Inc., et al.* (South Dakota) 69 F. 2d 452; *Loomis v. Peoples Construction Co.,* (Wisconsin) 211 Fed. 453; *Interstate Construction Co. v. Lakeview Canal Co. et al.,* (Wyoming) 224 Pac. 850.

[2] Alabama, Arizona, Arkansas, Idaho, Iowa, Michigan, Mississippi, Missouri, New York, Oklahoma, South Dakota, Texas, Utah, Vermont and Wisconsin.

This is one of a series of articles on What Constitutes Doing Business. See page 286 for a list of pamphlets obtainable on this important subject.

Domestic Corporations

Delaware.

Charter provision to compel shareholder to sell his stock to the corporation when ordered to do so by the board of directors ruled unreasonable. The charter of a corporation vested authority in the board of directors to elect to purchase its shares upon notifying the holder by mail and setting aside funds for that purpose. In the event the certificate was not presented before a date set in the notice, the shareholder's rights as such were to cease, with the exception of the right to the purchase price set by the board. Complainant shareholder sought an injunction to restrain the sale of his shares to the corporation under this provision. The Chancellor ruled that a provision which undertakes to compel the stockholder to sell his stock to the corporation whenever the directors see fit to require him to do so was not a reasonable one, and observed that as a matter of practical operation it could have no effect other than that of excluding all persons except the corporation from the field of possible buyers. *Greene v. E. H. Rollins & Sons, Incorporated,* Court of Chancery, New Castle County, July 11, 1938. Commerce Clearing House Court Decisions Requisition No. 201133. Clarence A. Southerland and Paul Leahy of Ward and Gray, for complainant. Aaron Finger of Richards, Layton and Finger, for defendant.

Delaware—Massachusetts.

Mortgage of substantially all of Delaware Corporation's property, located in Massachusetts, by its board of directors, ratified by stockholders, held valid act under Delaware statute authorizing board of directors to "sell, lease or exchange" all the corporate property. A Delaware company, by two mortgages subsequently transferred to defendant, mortgaged its real estate and most of its tangible personal property—all located in Massachusetts. Plaintiff receiver for the corporation contended the mortgages were void under the Delaware law, for, while the board of directors were authorized by statute (Sec. 65, G. C. L.) "to sell, lease or exchange all of its property and assets, including its good will and its corporate franchises," there was no specific statutory provision to "mortgage" all of its property. The United States District Court, District of Massachusetts, remarked: "Whether a 'sale' includes a 'mortgage,' within the meaning of the Act, apparently has not been determined by the Delaware Courts. Nor has this question actually been decided by the Circuit Court of Appeals for this circuit." The Court confirmed a master's report in which the observation was made that "In both states the mortgage is in form a conveyance to the mortgagee with a provision for defeasance of the interest conveyed upon performance of the mortgage condition," and which contained the conclusion that the "two mortgages constituted a mortgage (and hence a sale within the meaning of the statute) of substantially all of the property of Concrete Materials Co." In confirming the report, the Court

said: "The plaintiff asserts that the mortgages were void. I think they were voidable only and subject to ratification by the stockholders. The master's inference from the facts found, that the mortgages were ratified by a majority of the stockholders, was justified." *Greene, Receiver in Bankruptcy of Concrete Materials Company v. Reconstruction Finance Corporation et al.*, 24 F. Supp. 181. Devine, York & Russell of Boston, for plaintiff. Harry Bergson of Boston, for defendant Reconstruction Finance Corp.

Montana.

California court, in passing upon liability of directors of Montana corporation under Montana statute for failure to file an annual report, follows decisions of the Montana courts. Plaintiff company sought, in a California court, to recover from defendant directors of a Montana corporation upon their statutory liability as directors under the laws of Montana. Defendants' corporation became indebted to plaintiff on an open account for goods furnished between May and October, 1935, and, on September 17, 1936, plaintiff obtained a judgment against the corporation for this debt. The corporation had failed to file a Montana report of indebtedness due March 1, 1936, and by statute the directors of a delinquent corporation were made "liable for all debts or judgments of the corporation which may thereafter be in anywise incurred until such report shall be made and filed." The California District Court of Appeal, Second District, Division 2, observed that the Montana courts had ruled that, in actions seeking to establish directors' liability for debts, a plaintiff was required to establish that liability existed at the time the debt was incurred rather than at the time a judgment for debt might be secured. Following the view of the Montana courts, the California court held there could be no recovery under the facts as presented, inasmuch as there had been no default by the directors at the time the debt had been incurred. *Interstate Lumber Co. v. Tweedy et al.*, 82 P. 2d 208. Commerce Clearing House, Court Decisions Requisition No. 202272. Emmett E. Doherty and Robert G. Blanchard of Los Angeles, for appellant. Guthrie & Darling of Los Angeles, for respondents.

Nebraska.

Where corporation was in default for failure to publish annual notice of debts, stockholders could not recover from other stockholders under resulting statutory liability for debts, where debt sued upon was represented by notes issued by company in repurchasing stock. By section 24-213, Comp. St. 1929, stockholders are made liable for corporate debts to the extent of capital stock owned and unpaid subscriptions, upon the corporation's failure to publish an annual notice of its existing debts. The Supreme Court of Nebraska has denied to stockholders of a delinquent company the right to recover from other stockholders, equally in default, on account of

a debt of the corporation represented by unpaid notes it gave to the plaintiff stockholders when the company effected a repurchase of their stock. *Hoffman v. Geiger et al., (Hoffman et al., Interveners),* 279 N. W. 350; 281 N. W. 625. Arthur Balis of Lincoln, for appellants. O. B. Clark of Lincoln, for cross-appellants. J. W. Kinsinger, John J. Ledwith, Ralph S. Moseley, R. O. Williams, George Risser, Wm. Niklaus, Field, Ricketts & Ricketts, Sterling Mutz, Woods, Aitken & Aitken and Wm. Holt, all of Lincoln and McKillip & Barth of Seward, for appellees.

Ohio.

Corporation, whose charter had been cancelled, permitted to maintain suit on note. The Ohio Court of Appeals, Hamilton County, has affirmed a judgment that a corporation could maintain an action to collect a note due it, notwithstanding that its corporate charter had been cancelled by the Secretary of State less than two years prior to the commencement of the suit. *Tillitson & Co. v. Ward,** 59 Ohio App. 50; 16 N. E. 2d 1014.

* The full text of this opinion is printed in **The Corporation Tax Service,** Ohio, page 310.

Ohio Court of Appeals reviews appraisal of stock of dissenting stockholder. Plaintiff was the only stockholder in an Ohio company not voting in favor of the sale of the corporation's entire assets. Plaintiff had demanded $300 per share and there was evidence that the book value was about $43 per share. The corporation had offered to pay $40.91 for each share. Proceeding under section 8623-72, General Code, appraisers were appointed who fixed the value of the stock at $156 per share. This valuation was upheld by the Court of Appeals, the court finding no abuse of discretion or error in the record. *Miller v. Canton Motor Coach, Inc.,* 16 N. E. 2d 486; Commerce Clearing House Court Decisions Requisition No. 199749. (*Appeal dismissed by the Ohio Supreme Court,* 14 N. E. 2d 15, *on ground that no debatable constitutional question was involved.*) Frank T. Bow of Canton, for appellant. Faber Brukenbrod and Amerman & Mills of Canton, for appellee.

Texas.

Stockholders may not loan to their corporation amounts representing assets to which they would presumably be entitled if it were dissolved, nor may stockholders declare dividends. Plaintiffs, who were stockholders of defendant company, sued it to recover amounts alleged to have been loaned to it under these rather unusual circumstances: After the destruction by fire of the company's principal revenue-producing property, a stockholders' meeting was held to decide whether the company should be dissolved and its assets distributed, or whether new property should be purchased and the corporation continued. The stockholders adopted the latter course. There being at the time sufficient money in the

company's treasury to pay all outstanding indebtedness and leave $125 distributable to each stockholder, the stockholders adopted minutes agreeing to loan this amount to the company at 10% interest. It is the unpaid portion of the respective amounts of $125 so "loaned," with interest, which plaintiffs seek to recover. The Court of Civil Appeals of Texas, Eastland, held a recovery had been properly denied by the lower court. It stressed the fact that the property represented by the supposed loans of $125 each, was property of the corporation and had never become assets of the stockholders, and further, that the stockholders acted without authority, as the right of management of the corporation was vested in the directors and not in the stockholders. There could, therefore, have been no legal dividend declared, as the directors and not the stockholders are authorized to declare dividends. It was also observed that the alleged dividend had not been made out of actual earnings, which is the only proper source of cash dividends under the statutes in instances other than lawful liquidation. *Adams et al. v. Farmers Gin Co.*, 114 S. W. 2d 583. D. J. Brookreson of Benjamin, and Ratliff & Ratliff and Davis & Davis of Haskell, for appellants. B. C. Chapman of Haskell and Coombes & Andrews of Stamford, for appellee.

Foreign Corporations

Idaho.

Service of process, made upon corporation no longer doing business in state, set aside. Service of process was made upon the Auditor of Gem County, Idaho, as agent for the defendant, a foreign corporation. This corporation had six years prior to the time of service disposed of its Idaho property. It had not subsequently carried on any business in the state. Under these facts, the United States District Court, District of Idaho, sustained a motion to quash the service. *Phillips v. Manufacturers Trust Company et al.*,* United States District Court, District of Idaho, May 4, 1938; Commerce Clearing House Court Decisions Requisition No. 196658. S. T. Schreiber of Boise, for plaintiff. Hawley & Worthwine of Boise, for defendants.

Iowa.

Foreign corporation has burden of showing it has procured a permit to do business in Iowa when suing on a contract entered into in that state. An unlicensed foreign corporation brought an action on a contract, entered into in Iowa. The lower court, upon motion, directed a verdict in favor of the corporation. "It is undisputed in the evidence," said the Iowa Supreme Court, "and is conceded in argument, that the contract here sued on is an Iowa contract, and, under the express provisions of Section 8427, the plaintiff would have no right to maintain this action, without previously having procured the permit required by the statutes, unless, as contended

by plaintiff, the burden was on defendant to show that plaintiff was a stock corporation and that it had not obtained a permit to carry on business in this state." Reversing the judgment of the lower tribunal, the Supreme Court of Iowa concluded: "We think the burden was upon the appellee to show its compliance with the requirements of the statutes of this state by procuring a permit to do business in this state, and, in the absence of evidence to sustain such burden, the trial court was in error in directing a verdict for the appellee." *Johnson Service Company v. Hamilton,** 281 N. W. 127. Gillespie & Moody of Des Moines, for appellant. C. Glenn Garten and Richard F. Boyer of Des Moines, for appellee.

* The full text of this opinion is printed in **The Corporation Tax Service**, Iowa volume, page 526.

Missouri.

Unlicensed corporation, which carried on intrastate transaction, denied right to maintain action in the state courts, even though it subsequently became licensed to do business. The St. Louis Court of Appeals has held a foreign corporation to be "doing business" in Missouri under the following circumstances: "Plaintiff maintained an office in St. Louis as well as a home office in New York. When it made a shipment of goods from New York and it was placed in the warehouse operated by the Holstein Express Company in St. Louis its interstate journey was ended. Then, when its agent, Morris Friedman, caused these goods to be shipped out of the warehouse, to fill orders he had procured from St. Louis customers, that became an intrastate shipment and constituted 'doing business' by the plaintiff in the State of Missouri. This method of doing business made no interference with interstate commerce." The court referred to Section 4599, R. S. 1929, which denies to an unlicensed foreign corporation the right to "maintain any suit, or action, either legal or equitable, in any of the courts of this state, upon any demand, whether arising out of contract or tort." In applying this section, the court held that inasmuch as the plaintiff corporation was not qualified to do business at the time the transaction sued upon was carried on, its subsequent qualification "did not wipe out its dereliction in so far as the instant case is concerned." A recovery was therefore denied. *Seneca Textile Corporation v. Missouri Flower & Feather Company,** St. Louis Court of Appeals, October 4, 1938. CCH Court Decisions Requisition No. 203526; 119 S. W. 2d 991.

New York.

Contracting company erecting Cadet Academy at West Point with aid of subcontractor held "doing business" so as to be subject to service of process. The New York Supreme Court, Special Term, New York County, has held service of process upon a defendant valid under the following circumstances: "It is the general contractor for the erection of the Cadet Armory at West Point, the

material needed for construction is partly purchased in this state, the subcontract between plaintiff and defendant which is the basis of this action was entered into in this state and generally the defendant is so conducting itself that in law it must be considered as doing business in the state." The court resolved a doubt defendant expressed as to its jurisdiction over the territory where the service was made by ruling that, under Sections 22 and 23 of the State Law, by which West Point had been ceded to the United States, a reservation of the right to serve process, except as it might affect the property of the United States, was made, and the court therefore had jurisdiction, as the action in no wise concerned any property of the United States. *Goldberger Construction Corporation v. Edmund J. Rappoli Co., Inc.*,* 6 N. Y. S. 2d 472. Rosenberg & Rosenberg of New York City, for plaintiff. Engleman & Rosenberg (Milton Rosenberg, of counsel), of New York City, for defendant.

* The full text of this opinion is printed in **The Corporation Tax Service**, New York, page 250.

Pennsylvania.

Fulfilling single contract within state held "doing business." "Plaintiff had the contract to do certain landscaping, grading and road construction on defendant's estate in Bucks County. The contract was varied from time to time by additional agreements for extras and by certain changes in specifications. The work was in progress for about four months. Materials for it were purchased in Bucks County. The equipment required was brought from New Jersey, with the exception of several trucks which were hired locally. A few workmen were hired here. Plaintiff had neither office nor resident agent in Pennsylvania. The gross charge for the work under the written and oral contracts was $4471.74." The Pennsylvania Supreme Court, Eastern District, reversed a finding of the lower court to the effect that the transaction was an isolated instance which did not amount to "doing business," remarking that the contract contemplated not a single act, but a continuing project within the state for at least four months. Plaintiff, being an unlicensed foreign corporation, its right to maintain suit was denied. *Hoffman Construction Co. v. Erwin*,* 200 A. 579. Commerce Clearing House Court Decisions Requisition No. 200249. Grim & Grim of Perkasie, Webster Grim of Doylestown and Robert Grim of Philadelphia, for appellant. Arthur M. Eastburn of Doylestown, for appellee.

* The full text of this opinion is printed in **The Corporation Tax Service**, Pennsylvania, page 303.

Texas.

Sale of lighting system, shipped in interstate commerce, ruled not "doing business" so as to require obtaining of permit from Secretary

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will make a good Transfer Agent for your company, too.

of State. Appellant company brought this action to recover the balance due on a lighting system sold to appellee and shipped by the company in Ohio to the purchaser in Texas. A judgment of the lower court that the corporation could not maintain suit, because the testimony showed it was transacting business in Texas without having received a permit from the Secretary of State to do so, was reversed by the Court of Civil Appeals of Texas, Amarillo, which observed: "It has many times been held that the sale of goods by a foreign corporation and their shipment into this state from another state, either to the soliciting agent of the seller or directly to the purchaser, on orders of soliciting agents, or those mailed directly to the company by the purchaser, constitutes interstate transactions and that foreign corporations are permitted to maintain actions in the courts of this state upon such sales and transactions even though they do not have permits from the secretary of state to transact business in this state. They are protected by the interstate commerce provisions of the Federal Constitution and statutes and cannot be interfered with by state enactments." *Abner Manufacturing Co. v. Nevels,* 118 S. W. 2d 607. G. V. Pardue of Lubbock, for appellant. R. B. Moreland of Plains and Truett Smith of Tahoka, for appellee.

Taxation

Alabama.

"Use tax" section of Sales Tax Act held applicable to linen supplies rented in Alabama. The Circuit Court at Montgomery has ruled, without written opinion, that Section 2(d) of the Alabama Sales Tax Act, (providing, in effect, for a "use tax" on goods brought into the state on which the sales tax has not been paid), is applicable to towels, barber coats, gowns, tablecloths and similar articles, received from the main office of plaintiff linen supply company in Georgia by its Alabama branches, and rented to Alabama customers within twenty-four hours after receipt. *National Linen Service Corporation v. Long et al.,** Circuit Court, Montgomery, Alabama, May 27, 1938.

* Full text of order is printed in **The Corporation Tax Service,** Alabama volume, page 7751.

California.

Retail Sales Tax litigation. On May 11, 1936, the California District Court of Appeal held the Retail Sales Tax imposed by Chapter 1020, Laws 1933, constitutional in *Roth Drugs, Inc. et al. v. Johnson, State Treasurer, et al.,* 57 P. 2d 1022. An appeal in this case was denied by the California Supreme Court July 18, 1936, as noted on page 232 of the October, 1936, Corporation Journal. Since that time, individual sections of the act have been brought before the courts. In *National Ice and Cold Storage Company of California v. Pacific Fruit Express Company,* (California CT, ¶ 64-516), 79 P. 2d 380, the Cali-

fornia Supreme Court on May 2, 1938, ruled that Section 4 or any other provision of the act purporting to authorize retailers to collect from or charge to the purchaser of tangible personal property the tax imposed upon the retailer "for the privilege of selling" such property, is unconstitutional. In *DeAryan v. Akers,* (California CT, ¶ 64-533), 81 P. 2d 1028, the California District Court of Appeals, Fourth Appellate District, on August 2, 1938, held that the Retail Sales Tax is imposed upon and is a direct obligation of the retailer, and not the consumer, and that Sections 8 and 8½, purporting to require the retailer to compel the payment of the tax by the consumer are unconstitutional. A petition for hearing in the California Supreme Court was filed in this case on September 10, 1938. In *People of the State of California v. McDuffie et al.,* (California CT, ¶ 64-517), 79 P. 2d 386, the California Supreme Court, on May 2, 1938, followed its ruling in the *National Ice and Cold Storage Company* case, outlined above. An appeal was filed in the *McDuffie* case in the Supreme Court of the United States on September 10, 1938 under the title of *Richfield Oil Corporation v. The People of the State of California,* Docket No. 338 being assigned to the appeal. The appeal was dismissed, however, on October 10, 1938, for want of a substantial Federal question.

Federal.

Income tax assessment, based upon profits realized by corporation from sales of its own stock in 1929, set aside. The petitioner company sought, in the United States Circuit Court of Appeals, Fourth Circuit, a review of a decision of the Board of Tax Appeals upholding the assessment of a deficiency in income tax of the petitioner for the year 1929, based upon profit realized by the corporation during the year from sales of its own stock. The court reversed the ruling of the Board. It based its conclusion upon the fact that by the broad terms of a regulation in force from 1918 to 1934 a corporation was regarded as realizing no gain or loss from the purchase of its own stock, and the further fact that "Congress in the light of this interpretation of its intent reenacted in substantially the same words the definition of income subject to tax in five successive carefully considered revenue acts. Our path," continued the court, "is therefore clear; for the rule is well settled that if a statute is reasonably susceptible of two constructions, its reenactment after an interpretative ruling by responsible officials amounts to a legislative sanction of the course pursued. Especially is this true when the construction has been long maintained and several reenactments of the language in dispute have taken place. The rule has been frequently applied in cases under the revenue acts when the statutory language is in general terms and susceptible of different interpretation as applied to relevant facts." *R. J. Reynolds Tobacco Company v. Commissioner of Internal Revenue,** 97 F. 2d 302. J. G. Korner, Jr., of Washington, D. C., (D. H. Blair of Washington, D. C., and M. A. Braswell of Winston-Salem, N. C., on the brief), for petitioner. Morton K. Rothschild, Special Asst. to

the Attorney General (James W. Morris, Asst. Attorney General, and J. Louis Monarch, Special Asst. to the Attorney General, on the brief), for respondent. Cravath, deGersdorff, Swain & Wood, of New York City, Wm. D. Whitney of New York City, Richard H. Wilmer of Washington, D. C., and Joseph C. White of New York City on the brief as *amici curiae. (Appeal filed in the Supreme Court of the United States, September 8, 1938; Docket No. 328. Certiorari granted, October* 17, 1938.)

* The full text of this opinion is printed in the **Standard Federal Tax Service — 1938—** ¶ 9373.

Iowa.

Federal court rules it is without jurisdiction to entertain suit to restrain collection of Iowa use tax. An interesting decision, involving the Iowa use tax, was rendered by the United States District Court, Southern District of Iowa, when it ruled that Sears, Roebuck and Company, a foreign corporation, duly qualified in that state, could not prevail in its suit to restrain the State Board of Assessment and Review from cancelling its permit to operate retail establishments in Iowa because of the company's failure to collect the use tax from customers ordering by mail from establishments of the company in other states, the orders being filled by shipments from points without the state direct to customers in Iowa. The suit was dismissed on the sole ground that the court was without jurisdiction to entertain it by reason of a Federal statute (Sec. 41(1) of Title 28, U. S. C.) which withheld from District Courts of the United States the authority to enjoin the collection of state taxes where an adequate remedy was available in the state courts. This court concluded that there was such a remedy. *Sears, Roebuck and Company v. Roddewig et al.,** 24 F. Supp. 321; Commerce Clearing House Court Decisions Requisition No. 202332. Joseph G. Gamble (Ralph L. Read, Alden B. Howland and Joseph F. Rosenfeld, on the briefs) of Des Moines, for complainant. Charles Bookin, Sp. Asst. Atty. General, and Charles W. Wilson, Asst. Atty. General (John M. Mitchell, Attorney General, on the briefs) for defendants. (*Note:* An action seeking the same type of relief in a state court has since been instituted by the above mentioned plaintiff in the District Court of Iowa, Polk County, entitled *Sears-Roebuck & Co., Plaintiff v. Roddewig et al., Iowa State Board of Assessment and Review, Defendants;* Equity No. 54141.)

* The full text of this opinion is printed in **The Corporation Tax Service,** Iowa Volume, page 7649.

Louisiana.

Interest on unpaid state license tax, accruing while law imposing tax was being tested in Federal court, held to attach during period of litigation. Defendant company, just prior to the time its Louisiana Chain Store License Tax became due, instituted injunction proceed-

ings in a Federal court and contested the validity of the law imposing the tax. The law was subsequently held valid in the Federal suit. (See The Corporation Journal, October, 1937, page 14.) The State of Louisiana then brought this action to recover interest and attorney's fees, in addition to the Chain Store License Taxes due for the years during which the Federal court action was pending. The company denied liability for such interest or attorney's fees. The Supreme Court of Louisiana, however, ruled that an interest charge of two per cent per month and ten per cent additional if an attorney were employed to assist in the collection of the tax were necessary in the interest of public welfare and not in violation of the State or Federal Constitutions. "To hold otherwise," observed the court, "would discourage the prompt payment of taxes and encourage litigation to the detriment of the fisc of the State." *State v. Great Atlantic & Pacific Tea Co.*,* 183 So. 219; Commerce Clearing House Court Decisions Requisition No. 197984. Hugh M. Wilkinson of New Orleans, for appellant. Justin C. Daspit, F. A. Blanche and E. L. Richardson of Baton Rouge, for appellee. *(Appeal filed in the Supreme Court of the United States, September 24, 1938; Docket No. 380. Certiorari denied, October 24, 1938.)*

* The full text of this opinion is printed in **The Corporation Tax Service**, Louisiana volume, page 4449.

Montana.

The Chain Store Tax Act of 1937 held a valid legislative enactment. The District Court of the First Judicial District, Lewis and Clark County, in an action in which plaintiff sought to recover a payment made under the Chain Store Tax Act of 1937, alleging ineffective enactment of the law by the legislature, ruled that the bill was "duly and regularly passed by the legislative assembly, and thereafter duly signed by the presiding officer of each house of such assembly and, upon the approval of the Governor, to whom it was transmitted before the expiration of the time allotted to such session, became, and is now, a valid law of the State of Montana." A recovery was denied. *Vaughn and Ragsdale Company, Inc. v. State Board of Equalization et al.*,* District Court of First Judicial District, Lewis and Clark County, July 2, 1938. Commerce Clearing House Court Decisions Requisition No. 203448. Johnston, Coleman & Jamison of Billings and Arthur F. Lamey of Havre, for the plaintiff. Harrison J. Freebourn, Attorney General, and John A. Matthews, Attorney for the State Board of Equalization, for the defendants. *We are informed that an appeal is contemplated in this case.*

* The full text of this opinion is printed in **The Corporation Tax Service**, Montana volume, page 7796.

New York.

Interest on real estate company's secured sinking fund bonds held not to be included in measure of franchise tax imposed in part on

interest paid on debenture bonds, as "debenture bonds are such as are issued without specific security." Sec. 182 of the Tax Law, in imposing the franchise tax on real estate companies, contains a provision for a levy of 2% of the allocable portion of dividends paid during the preceding year and a stipulation that interest paid on debenture bonds shall be treated as dividends and taxed accordingly. The Court of Appeals of New York has held that where a taxpayer corporation had issued its "Security Sinking Fund 5½% Gold Bonds" under a trust agreement whereby it assigned and pledged to the trustee specific rents from designated property owned by the company, such bonds were not to be regarded as "debenture bonds" for the purpose of the tax, inasmuch as "debenture bonds," in the general view of lawyers and financiers, "are such as are issued without specific security." *Mercantile Properties, Inc. v. State Tax Commission,** 278 N. Y. 325, 16 N. E. 2d 352. J. G. Fink, Harry N. French and Robert J. Farrington of New York City, for appellant. John J. Bennett, Jr., Atty. General, (Wendell P. Brown, of Albany, of counsel), for respondent.

Receipts from interstate sales held not subject to New York City retail sales tax. The New York Supreme Court, Appellate Division, First Department, has ruled that the New York City sales tax may not be imposed upon receipts from transactions carried on as follows: An Illinois corporation, not licensed in New York as a foreign corporation, maintained an office in New York City, employing a principal solicitor and assistants for the purpose of soliciting orders for comptometers. These orders were forwarded to the principal office of the company in Chicago for acceptance and, if approved, were filled by shipment of comptometers from Illinois direct to the customer in New York, who remitted to the Chicago office in payment. No comptometers were kept in New York for the purpose of sale, although some were used there for demonstration and for loaning to customers in the event comptometers purchased became defective and needed repair. The servicing was done by a Delaware company, authorized to do business in New York. The receipts of the Illinois corporation, under the circumstances outlined, were ruled exempt from the tax inasmuch as the company was engaged in interstate commerce. *Felt & Tarrant Mfg. Co. v. Taylor,** New York Supreme Court, Appellate Division, First Department, May 27, 1938. Newton K. Fox, for petitioner. William C. Chanler, corporation counsel, (Frank J. Derrick, of counsel; Oscar S. Cox and Bernard H. Sherris, on the brief), for respondent.

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*The full text of this opinion is printed in **The Corporation Tax Service**, New York, page 5983-7.

Appealed to The Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

CALIFORNIA. Docket No. 302. *Felt and Tarrant Manufacturing Co. v. Corbett et al.*, 23 F. Supp. 186. (The Corporation Journal, June, 1938, page 208.) Validity of the California Use Tax. **Appeal filed, August 26, 1938. Probable jurisdiction noted, October 10, 1938.**

FEDERAL. Docket No. 328. *Guy T. Helvering, Commissioner of Internal Revenue, v. R. J. Reynolds Tobacco Company*, 97 F. 2d 302. (The Corporation Journal, December, 1938, page 279.) Federal income taxation—profits to corporation from trading in its own stock. **Appeal filed, September 8, 1938. Certiorari granted, October 17, 1938.**

LOUISIANA. Docket No. 380. *The Great Atlantic & Pacific Tea Company v. State of Louisiana*, 183 So. 219. (The Corporation Journal, December, 1938, page 280.) Right of state to collect penalties for period during which validity of tax was in litigation. **Appeal filed, September 24, 1938. Certiorari denied, October 24, 1938.**

WEST VIRGINIA. Docket No. 161. *United Artists Corporation v. James*, 23 F. Supp. 353. (The Corporation Journal, October, 1938, page 234.) Taxation of gross income from lease of motion picture films in interstate commerce. **Appeal filed, June 30, 1938. Probable jurisdiction noted, October 10, 1938.**

* Data compiled from CCH **U. S. Supreme Court Service, 1938-1939.**

Regulations and Rulings

COLORADO—The State Treasurer has issued a special rule under the Service Tax that where services are performed by one department of a business for another department of the same firm, with no actual payment being made, there being only a book entry, such services are not considered as taxable services; and, further, that income shown on the books of such a firm, if for an inter-departmental service, shall not be considered income for gross services. (Colorado CT, Corporation Tax Service, ¶ 64-608.)

IOWA—The State Board of Assessment and Review has ruled that the sales tax applies to personal property which has been repossessed or otherwise acquired by finance companies and which is afterwards sold by them. (Iowa CT, ¶ 7919.)

KENTUCKY—The Attorney General has rendered an opinion to the effect that a foreign corporation which leases cars to a rail carrier to be used in transportation in Kentucky is subject to the public utility franchise tax. (Kentucky CT, ¶ 85-016.)

LOUISIANA—A corporation in liquidation is required to pay the Louisiana corporation franchise tax, according to a ruling of the Attorney General. (Louisiana CT ¶ 1558.) That official has also ruled that if a wholesale establishment sells to a consumer, the sale is a sale at retail subject to the sales tax. (Louisiana CT, ¶ 64-506.)

MARYLAND—The Attorney General has ruled that a New Jersey corporation doing no business and maintaining no office in Maryland which sold to a Delaware corporation, holder of 51% of its common stock, certain lands and buildings in Maryland, the New Jersey company still owning a mortgage for a part of the purchase price, is not exercising its franchise in Maryland and is not subject to the franchise tax. (Opinion, Attorney General to State Tax Commission, Maryland CT, ¶ 5-023.)

MISSOURI—Receivers appointed by Federal courts are required to pay all taxes which have been assessed against property in receivership. (Attorney General's Opinion, Missouri CT, ¶ 2597.)

Where one buys a business, the seller of which is liable for unpaid sales taxes, the purchaser becomes liable to the unpaid taxes as a successor of the business under the 1934 and 1935 law; however, this applies to first purchasers only and not to subsequent purchasers. (Attorney General's Opinion, Missouri CT, ¶ 7946.)

TENNESSEE—The Attorney General of Tennessee in an opinion to the Secretary of State has ruled that a corporation proposing to re-incorporate under Section 3766 of the Code and also proposing to increase its capital stock will be required to pay a fee of one cent for each share of such increase and a fee of $10. for the reincorporation. (Tennessee CT, ¶ .407.)

VERMONT—The Commissioner of Taxes has ruled that taxes paid under the Federal income tax law are not allowed as deductions under the Vermont income and franchise tax law. (Vermont CT, ¶ 1512.)

Some Important Matters for December and January

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Notification Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

ALABAMA—Annual Application Fee for permit to do business due on or before February 1.—Domestic and Foreign Corporations.

ALASKA—Annual Corporation Tax due on or before January 1.—Domestic and Foreign Corporations.

CALIFORNIA—Quarterly Retail Sales Tax Return and Payment due on or before January 15.—Domestic and Foreign Corporations.

DELAWARE—Annual Report due on or before first Tuesday in January.—Domestic Corporations.

DISTRICT OF COLUMBIA—Annual Report published and filed between January 1 and January 20.—Domestic Corporations.

GEORGIA—Annual License Tax Report due on or before January 1.—Domestic and Foreign Corporations.

ILLINOIS—Annual Report due between January 15 and February 28.—Domestic and Foreign Corporations.

INDIANA—Quarterly Gross Income Tax Return and Payment due on or before January 15.—Domestic and Foreign Corporations.

IOWA—Quarterly Retail Sales Tax Return and Payment due on or before January 20.—Domestic and Foreign Corporations.

KENTUCKY—Annual Report due on or before February 1.—Domestic and Foreign Corporations.

LOUISIANA—Annual Report due on or before February 1.—Domestic Corporations.

NEW JERSEY—Annual Franchise Tax Report due on or before first Tuesday in February.—Domestic Corporations.

OHIO—Report to Department of Industrial Relations due during January.—Domestic and Foreign Corporations.

Retail Sales Tax Reports due on or before January 31.—Domestic and Foreign Corporations.

PENNSYLVANIA—Report of Unclaimed Dividends, Credits, etc. due in January.—Domestic Corporations.

SOUTH CAROLINA—Annual Statement due on or before January 31.—Foreign Corporations.

UNITED STATES—Fourth Instalment of Income Tax due on or before December 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

VERMONT—List of Stockholders due on or before January 31.—Domestic and Foreign Corporations.

WEST VIRGINIA—Quarterly Gross Sales Tax Return and Payment due on or before January 30.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets and forms, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York, N. Y.

When a Corporation Leaves Home. A simple explanation of the reasons for and purposes of the foreign corporation laws of the various states, and illustrations of when and how a corporation makes itself amenable to them. Of interest both to attorneys and to corporation officials.

We've Always Got Along This Way. This is a 24-page pamphlet giving brief digests of cases in various states in which corporation officials who had thought they were getting along very well with corporate representation by a business employe suddenly found themselves penalized in unusual and often embarrassing ways: such as one company that had to pay its employe-representative's alimony.

What! *We* Need a Transfer Agent? Nonsense! The foregoing is the title of a pamphlet which describes in detail, with many illustrations, the exact steps through which a stock certificate goes in being transferred from one owner to another by an experienced transfer agent—purpose being to enable any corporation official to judge more accurately whether or not his own company should use the services of a transfer agent.

Judgment by Default. Gives the gist of Michigan Supreme Court case of Rarden v. Baker and similar cases in other states, showing how corporations qualified as foreign in any states and utilizing their business employes as corporate representatives are sometimes left defenseless in personal damage and other suits.

A Corporation's Achilles Heel. Containing the complete text of the opinion of the Supreme Court of the United States in State of Washington ex rel. Bond & Goodwin & Tucker, Inc. v. Superior Court, State of Washington, of the Supreme Court of New Mexico in Silva v. Crombie & Co., and of the Supreme Court of Michigan in Rarden v. R. D. Baker Co.—three decisions of great significance to attorneys of corporations qualified in one or more states.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation, completely revised to reflect the changes made by the amendments of 1937.

What Constitutes Doing Business. (Revised to September 1, 1937.) A 168-page book containing brief digests of decisions selected from those in the various states, as indicating what is construed in each state as "doing business." The digests are arranged by state, but a Table of Cases and a Topical Index makes them accessible also by either case name or topic. There is also a section containing citations to cases on the question of doing business such as to make the company subject to service of process in the state.